

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America,

Case No. 2:23-cr-175

v.

Judge Michael H. Watson

Maurice L Whyte, II,

Defendant.

OPINION AND ORDER

Da Shawn Lee Martin (“Defendant”) moves to dismiss the indictment on Second Amendment grounds, ECF No. 38, and the Government has not yet responded.¹ For the following reasons, the motion is **DENIED**.

I. BACKGROUND

Defendant is charged with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). *See generally* Indictment, ECF No. 7. Defendant has at least one qualifying conviction: in 2016 Defendant pleaded guilty to conspiracy to transport stolen goods, a felony, in the United States District Court for the Northern District of West Virginia. *See* Complaint, ECF No. 1. Defendant also admits she has a felony theft conviction from 2011 and “[v]arious other theft-related” felony convictions thereafter.

¹ The Court finds ruling on Defendant’s motion to dismiss the indictment prior to the Government’s deadline to respond, which is December 6, 2023, will not prejudice the Government.

II. STANDARD OF REVIEW

Under Federal Rule of Criminal Procedure 12(b)(1), a “party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits.” Defendant raises a defect in the indictment under Rule 12(b)(3)(B), alleging that the crime charged is unconstitutional. On a motion to dismiss the indictment, the court must “take the government’s allegations as true.” *United States v. Palma*, 58 F.4th 246, 250 (6th Cir. 2023).

III. LAW AND ANALYSIS

Defendant challenges 18 U.S.C. § 922(g)(1), the federal felon-in-possession-of-a-firearm statute, on the grounds that it violates her Second Amendment rights, as defined in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). *See generally*, Mot., ECF No. 20.

Defendant’s challenge to § 922(g)(1) was fully addressed by this Court’s recent Opinion and Order in *United States v. Mackey*, Case No. 2:23-cr-67, 2023 WL 8093071 (S.D. Ohio Nov. 21, 2023). In that Opinion, this Court held that it remains bound by Sixth Circuit precedent holding that § 922(g)(1) is constitutional. *Id.* at *1–2 (citing *United States v. Carey*, 602 F.3d 738, 741 (6th Cir. 2010)). The Court alternatively held that § 922(g)(1) remains constitutional post-*Bruen* because there is a historical tradition of legislatures categorically disarming groups deemed to be dangerous or untrustworthy. *Id.* at *2–4. Defendant’s facial challenge to the Statute is unavailing.

Defendant argues the Statute is unconstitutional as applied because Defendant's prior convictions are non-violent and do not show she is particularly dangerous. See Mot. 18–20, ECF No. 38. Defendant cites to the Third Circuit's opinion in *Range v. Attorney General*, holding § 922(g)(1) unconstitutional as applied to Range. 69 F.4th 96 (3d Cir. 2023) (*en banc*).


This Court foreclosed that argument in *Mackey*, rejecting *Range* and adopting the Eight Circuit's view that "history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons." 2023 WL 8093071, at *4 (quoting *United States v. Jackson*, 69 F.4th 495, 504 (8th Cir. 2023)). In other words, there is no need to do a felony-by-felony analysis. Accordingly, Defendant's *Range* arguments fail as well.

I. CONCLUSION

For these reasons, Defendant's motion is **DENIED**. Pursuant to the Court's prior Order, ECF No. 40, the Court will set Defendant's *Lafleur* hearing, final pre-trial conference, and trial date when it rules on the last of Defendant's pending motions.

The Clerk shall terminate ECF No. 38.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT